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AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.M.P. No. 216 of 2007

Vidya Charan Shukla

Versus

State Through Central Bureau of Investigation (CBI)

O R D E R

Post for order: 26/11/2007

Sd/-
Sunil Kumar Sinha
Judge
26/11/2007

Noted
26.11.2007
Anil Singh

(266)

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.M.P. No. 216 of 2007

PETITIONER Vidya Charan Shukla, Aged about 79 years, S/o- Late Pt. Ravi Shankar Shukla, Resident of Radheshyam Bhawan, Labhandi, Raipur (C.G.)

Versus

RESPONDENT State Through Central Bureau of Investigation (CBI), NMDC Rest House, Civil Lines, Raipur (C.G.)

Petition under Section 482 of the Code of Criminal Procedure

Appearance:

Shri Ravish Agrawal, Sr. Advocate with Shri V.K. Munshi, Shri Ashok Trivedi & Shri Ali Naqvi, Advocates for the petitioner.

Shri Gautam Bhaduri, counsel for the respondent/C.B.I.

ORDER
(26.11.2007)

Sunil Kumar Sinha, J.

(1) The brief facts are that one Ram Avtar Jaggi, a leader of Nationalist Congress Party was shot at 11.40 p.m. on 4.6.2003 and in this connection, a First Information Report was lodged in P.S. Moudhapara, Raipur as F.I.R. No. 104/2003 for the offences punishable under Sections 447 and 307 I.P.C. This F.I.R. was lodged at the instance of V.K. Pandey, the Station House Officer, P.S. Moudhapara Raipur. Ram Avtar Jaggi died in the hospital. On 5.6.2003 at 2.15 a.m., another report vide F.I.R. No. 105/2003 was again registered for the same incident under Section 302 I.P.C. on the instance of Satish Jaggi, son of the deceased. Thereafter, five accused person were arrested in connection with Crime No. 104/2003 by the State Police and the charge-sheet was filed against them before the concerned Court. Later on, the case was committed to the Court of Sessions giving rise to Sessions Trial No. 334/2003. It appears that during the course of trial, an application under Section 173 (8) Cr.P.C. was moved by the Additional Public

Prosecutor for allowing a further investigation in the said case. This application was allowed and further investigation was permitted. Thereafter, on the instance of the State Government, the matter was handed over to the C.B.I. for further investigation and C.B.I. then registered Crime No. R.C. 1/S/2004 dated 22.1.2004 under Sections 120-B, 302 & 427 I.P.C. and Section 25/27 of the Arms Act. After completion of the investigation, the C.B.I. filed another charge-sheet against 31 persons, including the 5 accused persons of earlier crime number under Sections 120-B, 302, 427 & 201/34 I.P.C. and Section 25/27 of the Arms Act. This case was also committed to the Court of Sessions on 8.9.2005 giving rise to Sessions Trial No. 329/2005, in which the judgment was delivered on 31.5.2007 and some of the accused persons were convicted and almost all the convicted accused persons have preferred their appeals, which are pending for disposal before this Court.

(2) While passing the aforesaid judgment of conviction and order of sentence dated 31.5.2007 in Sessions Trial No. 329/2005, the learned Additional Sessions Judge made the following observations/remarks writing the name of the petitioner vide Para-462 of the said judgment:-

> "(462) जैसे ही सतीश जग्गी को रामावतार जग्गी की गोली मारकर हत्या करने की जानकारी हुई । उसने प्रदेशाध्यक्ष एन0सी0पी0 श्री विद्याचरण शुक्ला को दिया जो तत्काल मेकाहारा पहुंचे उन्हें बदला लेने का बड़ा अच्छा मौका मिला । अतः अपने समर्थकों के साथ थाना मौदहापारा पहुंचकर प्रदर्शन करते हुए अपने प्रतिद्वंदी से बदला लेने के आशय से उन्होंने सतीश जग्गी के माध्यम से अजीत जोगी एवं अमित जोगी के विरूद्ध उनके द्वारा हत्या करवाये जाने की रिपोर्ट करवा दिये ।"

It is against the said observations/remarks made by the Sessions Court, the petitioner has filed this Criminal Misc. Petition for their expunction.

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(3) The contention of the petitioner is that he is a veteran politician and has held the post of Cabinet Minster in the Central Cabinet and was elected as Member of Parliament (Lok-Sabha) for nine terms in past. He is the life President of the Indian Olympic Association, New Delhi. His father Late Pt. Ravi Shankar Shukla was the former Chief Minister of the erstwhile State of Madhya Pradesh. His elder brother Late Pt. Shyama Charan Shukla was three times the Chief Minister of the erstwhile State of Madhya Pradesh and at the relevant time, the petitioner was appointed as the president of the Nationalist Congress Party (NCP) for the State of Chhattisgarh and as President he had appointed Ram Avtar Jaggi (since deceased) as the Treasurer of the State Unit of the NCP. His further contention is that the observations made by the Sessions Court are conjectural, stigmatic, uncalled for and disparaging. The petitioner was neither cited as a witness by the C.B.I. in the charge-sheet, nor he was summoned and examined during the course of trial either by prosecution or by accused persons and was also not summoned by the Court and the learned Additional Sessions Judge made such observations/remarks against him. According to the petitioner, the remarks/observations have no foundation in reality besides being highly derogatory, stigmatic, scandalous, disparaging and they go against the reputation of the petitioner as they directly attribute false criminal motive on the part of the petitioner in falsely implicating Ajit Jogi and Amit Jogi in a heinous crime like conspiracy of murder of Late Ram Avtar Jaggi by using his son Satish Jaggi as an instrument for the same.

(4) The C.B.I. has filed its written reply. It has contended vide Para- 2 & 3 of the reply that during the investigation in the aforesaid crime, they had neither examined the petitioner as a witness nor had cited the petitioner as a prosecution witness. During the course of trial also the petitioner was neither summoned nor examined as a witness either by the prosecution or by the defence or by the Court and under the aforesaid circumstance if disparaging remarks have been made by the learned Additional Sessions Judge against the petitioner, no blame

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or responsibility can be fastened on the C.B.I. as the investigating agency and this Criminal Misc. Petition filed under Section 482 Cr.P.C. may be decided on its own merits.

(5) Learned Senior Counsel appearing for the petitioner argued that the impugned remarks/observations go against the reputation of the petitioner, the same were totally unwarranted and were not required for the lawful decisions of the case. They were not based on any material on record. Rather were in conflict with the material available on record. He vehemently argued that the petitioner was neither a party to the proceedings nor he was cited as a witness from either side nor even his statement under Section 161 Cr.P.C. was recorded by the prosecution, therefore, passing of any such remark behind his back violates the fundamental principles of natural justice. About the jurisdiction of this Court and maintainability of this petition at this stage, he argued that even in the prevailing circumstances that is during the pendency of appeals of convicted persons before the High Court, this Court can entertain a petition to expunge the remarks without touching the merits of the case. He cited the following decisions of the Apex Court in support of his above contentions:-

1. ***Dr. Raghubir Saran –Vs- State of Bihar and another, [AIR 1964 Supreme Court 1];***
2. ***Manish Dixit and others –Vs- State of Rajasthan, [2001 CRI.L.J. 133 (Supreme Court)]***
3. ***State of Maharashtra –Vs- Public Concern for Governance Trust and others with Vinay Mohan Lal –Vs- State of Maharashtra and others (Common judgment in both the cases), [(2007) 3 Supreme Court Cases 587].***

(6) On the other hand learned counsel for the respondent confined his argument only to the grounds raised in their reply.

(7) I have heard the learned counsel for the parties at length and have also perused the records of Criminal Miscellaneous Petition.

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(8) Is the remark(s)/observation(s) really requires expunction? In this regard, judgment of the Apex Court rendered in the matter of *Vinay Mohan Lal* is important. The Apex Court, referring to the observations made in the matter of ***D.F. Marion Vs. Minnie Davis, 1955 American LR 171,*** held that the reputation of an individual is an important part of one's life. It quoted the observations of the said judgment that "The right to enjoyment of a private reputation, unassailed by malicious slander is of an ancient origin, and is necessary to human society. A good reputation is an element of personal security, and is protected by the Constitution equally with the right to the enjoyment of life, liberty and property." The Apex Court also referred to the decision rendered in the matter of ***Board of Trustees of the Port of Bombay –Vs- Dilipkumar Raghavendranath Nadkarni's { (1983) 1 SCC 124 }***, in which it was observed that right to reputation is a facet of right to life of a citizen under Article 21 of the Constitution. The Apex Court finally ruled that one is entitled to have and preserve one's reputation and one also has a right to protect it. This was said by the Apex Court in a matter when the observations/strictures/remarks were made against the then Chief Minister of Maharashtra. The Court said that it cannot be gainsaid that the nature of remarks made in the impugned judgment will cast a serious aspersion on the Chief Minister affecting his reputation, career, etc. and condemnation without affording opportunity of being heard was a complete negation of the basic principles of natural justice.

(9) Reputation is a sort of right to enjoy the good opinion of others, and is as capable of growth, and has as real an existence as of any other thing and an injury to the reputation is a personal injury. Webster defines "reputation" to be good name, the credit, honor, or character which is derived from a favourable public opinion or esteem, and character by report. Therefore, it is clear that if any remark/observation comes in the judgment/order of a competent Court, which goes against the reputation of a person, causing personal injuries to him, certainly, he would have an exercisable right of his protection and the remark so made, if

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found unwarranted and unfounded, that gives right to him to maintain an action under the law for its expunction.

(10) In the present case, admittedly, the petitioner was holding the post of President of NCP for State of Chhattisgarh and he also held many other posts as referred to in Para-3 (supra). The remarks made in Para-462 of the impugned judgment says that taking advantage of murder of the deceased-Ram Avtar Jaggi, the then Treasurer of the NCP, the petitioner with an intention to take revenge from his opponents, made son of the deceased to lodge a report against the then Chief Minister Ajit Jogi and his son Amit Jogi, that means, according to the said remarks, he conspired with Satish Jaggi to lodge the report against these persons. Certainly, such remarks if are unfounded, will cast serious aspersion on the petitioner affecting his reputation and career. Therefore, looking to the nature of remarks, on the above principles, they can be interfered by this Court.

(11) Whether this Court has jurisdiction to entertain this petition, particularly at the stage when regular appeals against conviction are also pending before this Court ? In this regard, learned senior counsel appearing for the petitioner, has relied on the decision of Dr. Raghubir Saran (supra). In this case, it was ruled by the Apex Court that every High Court as the highest court exercising criminal jurisdiction in a State has inherent power to make any order for the purpose of securing the ends of justice. This power extends to expunction or ordering expunction of irrelevant remarks made against a person who is neither a party nor a witness to the proceeding, from a judgment or order of a subordinate court, although the matter has not been brought before it in regular appeal or revision, and would be exercised by it in appropriate cases for securing the ends of justice. Being an extra-ordinary power it will, however, not be pressed in aid except for remedying a flagrant abuse by a subordinate court of its powers such as by passing comment upon a matter not relevant to the controversy before it and which is unwarranted or is likely to harm or prejudice another. The Apex Court further ruled that there can be no doubt

that the judgment of a tribunal empowered by law to adjudicate upon and decide any matter affecting the rights of parties is inviolable unless the law allows it to be questioned or interfered with. In such a case the judgment can be challenged only and interfered with only by the specified authority and to the extent permissible by the express provisions of law. Not even the inherent power of the High Court is exercisable for this purpose because what is made final or inviolable by law is beyond the purview of such power. But the inviolability which attaches to a judgment must necessarily be confined to its integral parts, that is the verdict and reasons therefor. It cannot extend to matters which though ostensibly a part of the judgment are not in reality its integral parts. Clearly the High Courts, by expunging remarks from an order or judgment of a subordinate court, would not in any event be altering it on merits or in any matter of substance but be only deleting from it matter which being alien to the matter before the court ought never to have been there. As such is the only effect of what the High Court does, no prohibition to this course can be inferred from the fact that Ss. 423 and 439 which deal with appellate and revisional powers (as it then was), are silent about such matters. The Apex Court said that they do not exclude such power. The Apex Court further ruled that no doubt, the exercise of such power will have the effect of taking out of the judgment or order something which was there before and thus in a limited way to interfere with the content of the document embodying the judgment or order. But bearing in mind the paramount importance of securing the ends of justice the High Court must be deemed to have such power. The Apex Court further ruled that when the question arises before the High Court in any specific case whether to resort to such undefined power, it is essential for it to exercise great caution and circumspection. Thus when it is moved by an aggrieved party to expunge any passage from the order or judgment of a subordinate court it must be fully satisfied that the passage complained of is wholly irrelevant and unjustifiable, that its retention on the records will cause serious harm to the person

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to whom it refers and that its expunction will not affect the reasons for the judgment or order.

(12) Therefore for exercising such jurisdiction, following principles can be derived, amongst others :

i) The power can not be exercised to expunge the integral part of the judgment i.e. the verdict and reasons therefor;

ii) Before exercising such power a difference has to be determined between the remarks coming forward ostensibly as a part of judgment and that being in reality its integral parts;

iii) The expunction is not going to alter the judgment on merits or in substance;

iv) The objectionable portion ought not to have been there in the judgment. It must be fully justified that the passage complained of is wholly irrelevant and unjustifiable;

v) The expunction will not affect the judgment or the reason or the order;

vi) The power is to be exercised in limited manner with great caution and circumspection keeping in mind the principles, finality and inviolability of the judgment &

vii) That all to secure the ends of justice.

(13) If we apply these principles in the facts and circumstances of the present case, firstly, it would appear that there hardly appears in material on record to make such remarks. Learned counsel for the petitioner has argued on this point referring to the contents of the F.I.R. No. 105/2003 lodged by Satish Jaggi and has also referred to his Court evidence. After referring to many paragraphs, he most specifically referred to Para- 67 of his evidence showing that there was no material to observe that it was the petitioner who got the report lodged making allegations against Ajit Jogi and Amit Jogi.

(14) I have also gone through the contents of the F.I.R. as also the Court evidence of Satish Jaggi. It does not appear in these document that the report was lodged on the instance of the petitioner or the allegations against Ajit Jogi and Amit Jogi were made on account of indulgence of the petitioner and the petitioner

got such report lodged making Satish Jaggi as an instrument for it. Besides the remarks being based on no material on record, though ostensible, they do not appear to be integral part of the judgment. In Para-67, Satish Jaggi has denied that the petitioner pressurized and the petitioner himself lodged the report in police and he pressurized him and got his signature. In fact, the passage complained is unjustifiable and its expunction will not affect the judgment or the reason or the order. The finality of the judgment is not going to be effected if remarks are expunged. The expunction is not going to alter the judgment on merits or in substance and on above principles the expunction is possible on the face of it.

(15) About the expunction during the pendency of criminal appeals filed by the convicted accused persons, in my opinion, there is no bar because appeals by convicts are to be heard and decided on their own merits. In the matter of *Vinay Mohan Lal*, the Apex Court, vide Para-38 of the judgment, while expunging the remarks observed that the concerned Special Leave Petition shall be dealt with absolutely on merits of the rival claims by a separate judgment and it further observed vide Para-39 that it does not propose to go into the merits of the other contentions which are the subject matter of Special Leave Petition. Therefore, in view of the above, even during the pendency of the connected criminal appeals in which hearing has to take place on their own merits, this petition, filed under Section 482 of the Code of Criminal Procedure, would be maintainable.

(16) Now the last question argued is about passing of the remarks behind the back. Learned Senior Counsel appearing for the petitioner has referred the decision of *Manish Dixit* (supra) in this regard. The Apex Court observed in Para-43 of the said judgment as follows:

> "**43.** Even those apart, this Court has repeatedly cautioned that before any castigating remarks are made by the Court against any person, particularly when such remarks could ensue serious consequences on the future career of the person concerned he should have

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been given an opportunity of being heard in the matter in respect of the proposed remarks or strictures. Such an opportunity is the basic requirement, for, otherwise the offending remarks would be in violation of the principles of natural justice. In this case such an opportunity was not given to PW 30 (Devendra Kumar Sharma). ***(The State of Uttar Pradesh –Vs- Mohammad Naim, AIR 1964 SC 703; CH. Jage Ram, Inspector of Police and another –Vs- Hans Raj Midha, (1972) 1 SCC 181; R.K. Lakshmanan –Vs- A.K. Srinivasan and another, (1975) 2 SCC 466; Niranjan Patnaik –Vs- Sashibhusan Kar and another, AIR 1986 SC 819 & State of Karnataka – Vs- Registrar General, High Court of Karnataka, AIR 2000 SC 2626).***

(17) In ***State of Bihar –Vs- Lal Krishna Advani and others, (2003) 8 SCC 361***, it was observed by the Apex Court that strictures cannot be passed against an individual without making him a party and without giving an opportunity to be heard since the right to reputation is an individual's fundamental right. The reference of *Advani's* case is in the judgment of *Vinay Mohan Lal,* in which the Apex Court again opined that when an authority takes a decision which may have civil consequences and affects the rights of a person, the principles of natural justice would at once come into play.

(18) If the above principles are applied in this case, it is clear that the petitioner was neither a party to the proceedings nor his statement was recorded by the C.B.I. during the course of investigation. He was not cited either as a prosecution witness or a defence witness and was also not examined even as a court witness in the proceeding of sessions trial. That is to say that he was complete stranger to the proceedings and behind his back the aforesaid remarks have been passed. As I have already held that the remarks were objectionable and they go against the reputation of the petitioner and they affect the rights of the petitioner for

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which he has full authority of protection and in these circumstances, the principles of natural justice would at once come into play. In fact, by the above remarks of the Sessions Court, the petitioner has been condemned unheard. Therefore, the remarks have been passed in violation of fundamental principles of natural justice.

(19) For the reasons stated above, I hold that the observations/remarks made by the Sessions Court against the petitioner behind his back vide Para-462 of the impugned judgment were totally unwarranted and they require expunction. The remarks contained in Para-462 of the judgment are expunged.

(20) The petition is allowed to the extent indicated above. It is made clear that any observation made in this order shall have no bearing on the merits of the criminal appeals pending before this Court, which shall be dealt with absolutely on their own merits in accordance with law.

(21) Ordered Accordingly.

Sd/-
Sunil Kumar Sinha
Judge

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